

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : U. MAEDING

Confirmation No.: 7743

Appl. No : 10/599,983

Examiner: Phutthiwat Wongwian

(U.S. National Phase of PCT/DE05/000622)

Filed : April, 7 2005

Art Unit: 3741

For : DAMPING OF VIBRATION OF A COMBUSTION CHAMBER BY
RESONATORS**RESPONSE TO ELECTION OF SPECIES REQUIREMENT**

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Amendment
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

In response to the Examiner's election of species requirement of June 25, 2010, the time set for response extending until July 26, 2010 (July 25, 2010 being a Sunday), Applicant hereby elects with traverse, Species 1, which is directed to Figure 1. Applicant submits that dependent claims 21 and 22 are readable on the elected species, and at least claims 6 – 17, 24 and 25 are generic. Thus, at least pending claims 6 – 17, 21, 22, 24 and 25 are readable on the elected species. The above election is made with traverse.

In the election of species requirement of June 25, 2010, the Examiner indicated that all claims (6 – 25) were subject to election under 35 U.S.C. § 121. The Examiner has required an election of one of the following species:

Species 1 – Figure 1;

Species 2 – Figure 2;

Species 3 – Figure 3; and

Species 4 – Figure 4.

The Examiner asserts that the species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. Additionally, the Examiner states that these species are not obvious variants of each other based on the current record.

Applicant respectfully traverses this basis for election. Applicant emphasizes that the Examiner did not properly set forth and apply the Unity of Invention standard pursuant to PCT Rule 13.1. The instant application is a U.S. National Stage Application. The Examiner's basis for the restriction is improper for the following reasons: first of all, the Examiner has failed to properly construe and consider the claims under the "special technical feature" standard and, furthermore, based upon this standard, the election is improper.

The standard, as described clearly in M.P.E.P. sections 1850 and 1893.03(d), is whether the groups can be read to have a common technical relationship, i.e., whether a special technical feature is common to the groups. Accordingly, if each of the groups can be read to have one or more common special technical features or relationships, then they simply cannot be restricted.

In this case, the technical relationship or technical features common to all of the claims are at least the features recited in claim 6, as well as claims 14 and 25, which the Examiner must acknowledge as being generic. Applicant emphasizes that each of the features noted in the species groups have in common at least each of the features recited in claims 6, 14 and 25. Thus, it is submitted that the Examiner has apparently disregarded and/or not considered the claim

language in an attempt to support the restriction requirement that is otherwise clearly improper under PCT Rules 13.1 and 13.2.

Accordingly, Applicant submits that under the "unity of invention" standard, the Examiner has set forth no proper basis for restricting the invention to any of the groups or species.

For all these reasons, and consistent with the office policy as set forth in M.P.E.P. §§ 803, 1850 and 1893.03(d), Applicant respectfully requests that the Examiner reconsider the position taken in the above-mentioned Official Action and withdraw the election requirement in the present application. Accordingly, the Examiner's restriction requirement is believed to be entirely improper and inconsistent with current USPTO guidelines, and has been traversed for the reasons set forth above.

Applicant has elected Species 1 directed to Figure 1. Moreover, Applicant acknowledges that, upon allowance of a generic claim, the other species will be rejoined and examined on their merits. The Examiner has identified claim 6 as generic. Applicant submits that dependent claims 21 and 22 are readable on the elected species, and at least claims 6 – 17, 24 and 25 are generic (not just claim 6). Thus, pending claims 6 – 17, 21, 22, 24 and 25 are readable on the elected species. The above election is made with traverse.

Respectfully submitted,
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